

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-208517-D1 AND ALL  
OTHER SEAMAN DOCUMENTS

Issued to: Kenneth Jones

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1530

Kenneth Jones

A petition to reopen the hearing has been filed in accordance with the provisions of Title 46 Code of Federal Regulations 137.25.

By order dated 26 August 1965, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for one month outright upon finding him guilty of misconduct. The specification alleges that while serving as an ordinary seaman on board the United States SS QUISQUEYA under authority of the document above described, on 23 July 1965, Appellant assaulted and battered a member of the crew, able seaman Rivera, "by kicking him and striking him with your fist."

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

Six witnesses testified for the Government. Appellant was the only defense witness. He testified that he struck Rivera in self-defense.

The Examiner found that Appellant was guilty of assaulting and battering Rivera by "kicking at him" (without kicking him) and by "striking him with his fist." In effect, the Examiner found Appellant guilty of assault and battery by using his fist alone.

After filing a timely notice of appeal, Appellant filed, on 7 October, the petition to reopen the hearing on the basis of newly discovered evidence. Action on the appeal will be held in abeyance pending the outcome on the petition to reopen.

The petition states that, in answer to letters sent by Appellant at about the time the hearing commenced, replies were received, on 17 September, from two stevedores living in Germany who were on the ship at the time of the offense alleged. In brief, signed statements attached to the petition, one of the stevedores claims that Appellant was attacked by Rivera and the other stevedore states that he saw a man trying to attack Appellant. On this basis, Appellant requests that the hearing be reopened to take the testimony of these two witnesses which would be favorable to Appellant.

APPEARANCE: Rolnick, Ezratty and Huttner of New York City, by Bernard Rolnick, Esquire,  
of Counsel

### OPINION

The request will be granted in view of the inability of Appellant to interview potential witnesses in Germany before the close of the hearing, the prior absence of definite information that the two stevedores saw the incident, and the lack of knowledge that the two stevedores would eventually reply to the letters mailed early in August. (One of them wrote that he had been away on vacation.) Prior to the receipt of these letters in September, Appellant had no assurance that such evidence was available.

These are considered to be adequate "reasons why the petitioner, with due diligence, could not have discovered such new evidence prior to the date the hearing was completed." 46 CFR 137.25-5(b)(4). Therefore, the petition will be granted because "valid explanation is given for the failure to produce this evidence at the hearing." 46 CFR 137.25-10(b).

### ORDER

The order of the Examiner dated at New York, New York, on 26 August 1965, is VACATED. The record is REMANDED for further proceedings not inconsistent with this decision.

E. J. Roland  
Admiral, United States Coast Guard  
Commandant

Signed at Washington, D. C., this 26th day of November 1965.

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